

REMARKS

In accordance with the foregoing, claims 1 and 10 have been amended, and claims 3-4 have been cancelled, without prejudice or disclaimer. No new matter is being presented. Therefore, claims 1-2, 6-12, 14 and 21-25 are pending and under reconsideration.

AMENDMENT OF CLAIMS 1 and 10:

Applicant notes that claims 1 and 10 have been amended to be more clearly consistent with the description of the present invention in the specification, specifically, paragraphs [0021] through [0026].

REJECTIONS UNDER 35 U.S.C. §103:

Claims 1-2, 6, 8, 10, 11, 14 and 21-25 are rejected under 35 U.S.C. §103(a) as being unpatentable over Japanese Patent No. 2000-231917 in view of either Japanese Patent 03-049152 or Japanese Patent 61-008846. Claims 1-2, 6-11, 14 and 21-25 are rejected under 35 U.S.C. §103(a) as being unpatentable over Japanese Patent No. 2002-367577 in view of either Japanese Patent 03-049152 or Japanese Patent 61-008846. Claims 3, 4 and 12 are rejected under 35 U.S.C. §103(a) as being unpatentable over either Japanese Patent No. 2000-231917 or Japanese Patent No. 2002-367577 each in view of either Japanese Patent 03-049152 or Japanese Patent 61-008846 and in further view of British Patent No. GB 211295. These rejections are overcome.

Regarding the rejections of claims 1 and 10 in view of the JP '917 reference, it is noted that these claims recite a cap assembly comprising a cap plate having a port aperture, an electrode port, including a head and an insertion whose diameter steadily increases from the head to an end thereof, the insertion being inserted into the port aperture with a predetermined distance maintained between the head and the cap plate, wherein the diameter of the head of the electrode part is greater than the upper diameter of the insertion of the electrode part, and an insulating member. The insulating member is formed to extend from, at least, a lower surface of the cap plate to a lower portion of the head of the electrode port to insulate the cap plate and the electrode port and to bind the electrode port to the cap plate.

As an initial matter, it is noted that, in order to establish a prima facie case of

obviousness, the prior art references "must teach or suggest all the claim limitations." See *MPEP 2143*. Here, despite the suggestions of the Examiner, that is not the case.

In detail, JP '917 discloses a plug 4B to be inserted into the port aperture of a cap plate 3. An insulating member 13 is wrapped around the edges of the cap plate 3 but does not extend all the way to the head of the plug 4B. Rather, a ring plate 15 is installed above the insulating member 13 and below the head of the plug 4B such that the ring plate is disposed between the head of the plug 4B and the insulating member.

Thus, applicant submits that JP '917 does not disclose the claimed insulating member that is formed to extend from, at least, a lower surface of the cap plate to a lower portion of the head of the electrode port, as claimed. Applicant further submits that none of the other references disclose or are cited as disclosing the claimed feature in question.

Furthermore, in addition to noting the fact that the references do not disclose the claimed insulating member, applicant notes that the suggested combinations of the JP '917 reference with the JP '152 and the JP '846 references are believed to be improper.

According to the Office Action, JP '917 does not disclose an electrode port including a head and a body (presumably the Examiner meant to suggest that JP '917 does not disclose the claimed electrode port) but the JP '152 and the JP '846 do teach tapered electrode ports. Further, according to the Office Action, it would have been obvious to "modify the teachings of JP '917 by tapering the electrode port body" to improve "the seal of the mating surfaces of the electrode port body and battery housing."

In response, applicant notes that evidence to support a proposed modification of the references must be found either explicitly or implicitly in the references themselves. To this end, applicant respectfully asserts that no such evidence exists and that the Examiner appears to be using the benefit of hindsight provided by the claimed invention to identify a weakness of the JP '917 reference that would not have been apparent at the time.

In detail, even if, *arguendo*, the JP '152 and the JP '846 actually disclose the tapered electrode ports as suggested, there is no evidence that the suggested modification of the JP '917 reference would be desirable. That is, the lower portion of the plug 4B of the JP '917 reference is already extended outwardly. As such, it is reasonable to assume that a seal between this portion of the plug 4B and the insulating member 13 exists in an operationally satisfactory manner. In other words, there does not appear to be a need for a tapered plug 4B in the JP '917 reference.

Furthermore, it is noted that the tapered terminal pole 4 of JP '152 and the electrode

pillar 4 of JP '846 do not teach or suggest a head having a greater diameter than the upper portion of its body. Contrary to the references cited, the electrode port of the present invention includes a head having a greater diameter than the upper portion of the insertion. Further, the characteristic shape of the electrode port of the present invention provides tighter binding between the electrode port, the insulation member and the cap plate.

Thus, applicant respectfully asserts that claims 1 and 10 are patentably distinguished from the cited references to JP' 917, '152, and '846 and that, therefore, the rejections of claims 1 and 10 are overcome.

Regarding the rejections of claims 2, 6, 8, 11, 14 and 21-25, it is noted that these claims depend from claims 1 and 10, respectively, and that the rejections of these claims are overcome for at least the reasons set forth above.

Regarding the rejections in view of the JP '577 reference in combination with the JP '152 and the JP '846 reference, it is noted that, like the 'JP 917 reference, the '577 reference is equipped with a plug 4 that is flared outwardly at a lower portion thereof. As such, as discussed above, there is no suggestion that the proposed modification of the reference to include the teachings of either the JP '152 or the JP '846 references would be desirable. Again, it is reasonable to assume that a seal between this flared portion of the plug 4 and the insulating member 2 exists in an operationally satisfactory manner and there does not appear to be a need for a tapered plug 4 in the JP '577 reference.

Thus, applicant respectfully asserts that claims 1 and 10 are patentably distinguished from the cited references to JP' 577, '152, and '846 and that, therefore, the rejections of claims 1 and 10 are overcome.

Regarding the rejections of claims 2, 6, 8, 11, 14 and 21-25, it is noted that these claims depend from claims 1 and 10, respectively, and that the rejections of these claims are overcome for at least the reasons set forth above.

Regarding the rejections of claims 3, 4 and 12, it is noted that these claims depend from claims 1 and 10 and that the additionally cited references do not cure the defects of the JP '917 and '577 references. Therefore, the rejections of these claims are believed to be overcome for at least the reasons as set forth above.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited. If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 503333.

Respectfully submitted,

STEIN, MCEWEN & BUI, LLP

Date: 5/21/07

By: Douglas X. Rodriguez
Douglas X. Rodriguez
Registration No. 47,269

1400 Eye Street, NW
Suite 300
Washington, DC 20005
Telephone: (202) 216-9505
Facsimile: (202) 216-9510